EXHIBIT G

Public Comments

From: OCC Customer Service <OCC2@fresno.gov>
Sent: Monday, January 29, 2024 8:32 AM
To: Mayor <Mayor@fresno.gov>
Subject: FW: Smoke Shops

From: Melanie Zimmerer <1zimmeref@att.net>
Sent: Saturday, January 27, 2024 2:33 PM
To: OCC Customer Service <OCC2@fresno.gov>
Subject: Smoke Shops

External Email: Use caution with links and attachments

First Name	Melanie
Last Name	Zimmerer
Email	1zimmeref@att.net
Phone Number	(559) 285-4651
Subject	Smoke Shops
Message	Please get rid of smoke shops in our neighborhoods and ones so close to our schools!!!! Many of these places sell items that are illegal !!!! Mayor Dyer, personally told me California is going to make it illegal like other countries…but time is running out for our community and these businesses are creating more horrible addictions!!! My 37 year old son is addicted to Nitrous Oxide sold in smoke shops. He's literally killing himself with this addiction! The cans it comes in say "Do Not Inhale" how can they sell this stuff in smoke shops!!! It doesn't make sense. My son graduated from CalPoly and is a brilliant person…he is an engineer. But he is so addicted…it's scary. I'm sure there are more people in Fresno county struggling with this addiction! We need this to stop in our community !!!
IP Address	108.147.175.139
User-Agent	Unknown 5.0 / OS X

(Browser/OS)	
Referrer	https://www.fresno.gov/contact/

HILMOE BERTIER

Tate S. Hilmoe (CA, MD)
Theodore P. Bertier (CA, TX)

Of Counsel
Derek J. Lobo (CA)
Daniel Petrov (CA)
Tyler J. Buck (CA, MA)

12526 High Bluff Drive, Suite 300
San Diego, CA 92130
p: 800.941.4807 | f: 858.386.4393
www.hblaw.io

With Offices in
Del Mar, CA
Rancho Cucamonga, CA
College Park, MD

January 5, 2024

Via Electronic Mail and First Class Mail

City of Fresno
Fresno City Council
2600 Fresno Street
Fresno, CA 93721
Email Contacts:
annalisa.perea@fresno.gov
garry.bredefeld@fresno.gov
luis.chavez@fresno.gov
Miguel.arias@fresno.gov
Mike.karbassi@fresno.gov
Nelson.esparza@fresno.gov
Tyler.maxwell@fresno.gov

City of Fresno
Jerry P. Dyer, Mayor
Todd Stermer, City Clerk
2600 Fresno St.
Fresno, CA 93721
clerk@fresno.gov

Re: Ordinance Amending Sec. 15-2761 Tobacco and Vapor Sales – Regulation of "Smoke Shops"

Dear Mayor Dyer and Council Members:

The objective of this letter is to pass on my concerns as legal counsel to the California Smoke Shops Association and several tobacco businesses in the City of Fresno for the proposed "smoke shop" ordinance amendment. The proposed amendment to the Fresno Municipal Code, 15-2761 Tobacco and Vapor Sales – Regulation of "Smoke Shops" will directly impact my clients' tobacco businesses as well as their customers that sell tobacco products in Fresno.

The proposed amendment, which significantly reduces the number of allowable smoke shops in Fresno, imposes significant restrictions on lawful businesses operating within the City of Fresno, and singles out smaller family owned "smoke shops" to the benefit of larger commercial retail establishments that sell the overwhelming majority of tobacco products. The proposed restrictions, while seemingly aimed at controlling the sale of tobacco and vapor products, infringe upon the legitimate business rights of family run operations.

I respectfully request that the Mayor and the Fresno City Council give these comments serious consideration.

Section 15-2761(B)(1) "Conditional Use Permit"

Section 15-2761(B)(1) requires new and existing establishments to obtain a Conditional Use Permit ("CUP"). This Section is alarming because the proposed ordinance has no established criteria for determining the issuance of a CUP for the purposes of the amendment. Additionally, obtaining a CUP adds an additional layer of bureaucracy and cost burden to a family business operation and disparately impacts tobacco businesses from other businesses within Fresno.

There is no data to suggest that the proposed CUP condition and limits to the number of smoke shops would reduce the consumption of tobacco products. The counterproductive ordinance would force legitimate business, capital and tax revenue to surrounding areas of Fresno. Additionally, this restrictive proposed provision of the amendment raises concerns about possible conflicts of interest. Are there existing establishments receiving preferential and/or protective treatment? I would request that Section 15-2761(B)(1) be removed or modified from the ordinance.

Taking of Property

The proposed amendment, which significantly reduces the number of allowable smoke shops in Fresno, raises significant concerns regarding the potential violation of the business owners' property rights under the Takings Clause of the 5th Amendment to the U.S. Constitution. The 5th Amendment states that "private property shall not be taken for public use, without just compensation." A taking can occur not only through physical seizure, but also through regulations that substantially diminish the value of property or restrict its use in such a way that renders it economically infeasible to continue operating.

The proposed amendment severely restricts the ability of family owned smoke shops to operate within Fresno. By significantly reducing the number of allowable licenses and imposing stringent regulations, the amendment effectively renders many businesses economically nonviable, and many of these small businesses have inventory that takes time to sell. This substantial interference with property rights constitutes a taking.

While the amendment claims to address public health and safety concerns, the primary beneficiaries of the reduced competition appear to be larger commercial retail chains that sell the overwhelming majority of tobacco products. This suggests that the amendment primarily serves private interests rather than a genuine public purpose.

In the case of the amendment, just compensation should be provided to the owners of smoke shops that are forced to close due to the reduction in licenses. This compensation should be determined through a fair and impartial process.

Potential for Unintended Consequences

The proposed amendment's effectiveness in achieving its intended goals is questionable. Some potential unintended consequences include:

- Increased Black Market Activity – Restricting the availability of certain products through

licensed retailers may inadvertently drive consumers toward the black market, leading to unregulated and potentially unsafe products entering circulation.

- Reduced Tax Revenue – The closure or reduced business activity of smoke shops will lead to a decrease in tax revenue for Fresno, potentially impacting essential services.

- Job Losses – Implementing the amendment will result in job losses within the smoke shop industry, negatively impacting the local economy.

Lack of Evidence Based Approach

The proposed amendment appears to be based on assumptions and concerns rather than concrete evidence of harm caused by smoke shops. A comprehensive study analyzing the impact of smoke shops and large commercial retail chains selling tobacco on public health and safety in Fresno would be beneficial in developing data-driven solutions.

Implementing the proposed amendment without sufficient evidence of its effectiveness and potential for unintended consequences may not be the most prudent course of action. Exploring alternative solutions with a focus on collaboration between stakeholders, including businesses and community members, could lead to more effective and sustainable solutions.

Thank you for your consideration to the above comments. Do not hesitate to contact me at 800-941-4807 or tate@hblaw.io should you have any questions or need further information.

Best Regards,
Hilmoe Bertier LLP

Tate Hilmoe

Tate Hilmoe

McCORMICK
BARSTOW LLP
ATTORNEYS AT LAW

Todd A. Wynkoop
todd.wynkoop@mccormickbarstow.com

Ella Moberg
ella.moberg@mccormickbarstow.com

Garrett J. Wade
garrett.wade@mccormickbarstow.com

FRESNO, CA OFFICE
7647 North Fresno Street
Fresno, California 93720
P.O. Box 28912
Fresno, CA 93729-8912
Telephone (559) 433-1300
Fax (559) 433-2300

Other offices of
McCORMICK, BARSTOW, SHEPPARD,
WAYTE & CARRUTH LLP

www.mccormickbarstow.com

CINCINNATI, OH OFFICE
Scripps Center
312 Walnut Street, Suite 3425
Cincinnati, Ohio 45202-4064
Telephone (513) 762-7520
Fax (513) 762-7521

LAS VEGAS, NV OFFICE
8337 West Sunset Road, Suite 350
Las Vegas, Nevada 89113
Telephone (702) 949-1100
Fax (702) 949-1101

MODESTO, CA OFFICE
1125 I Street, Suite 1
Modesto, California 95354
Telephone (209) 524-1100
Fax (209) 524-1188

RENO, NV OFFICE
201 W. Liberty Street, Suite 320
Reno, Nevada 89501
Telephone (775) 333-0400
Fax (775) 333-0412

SAN LUIS OBISPO, CA OFFICE
1041 Mill Street, Suite 105
San Luis Obispo, California 93401
Telephone (805) 541-2800
Fax (805) 541-2802

VISALIA, CA OFFICE
403 North Floral
Visalia, California 93291-4950
Telephone (559) 433-1300
Fax (559) 433-2300

February 18, 2025

VIA EMAIL ONLY

City of Fresno
Planning Commission
2600 Fresno Street
Fresno, CA 93721
PublicCommentsPlanning@fresno.gov

Re: ID 25-160: Comments on Text Amendment Application No. P23-03410 Submitted on Behalf of the California Smoke Shops Association

Dear Commissioners:

We have been retained by the California Smoke Shops Association ("CSSA") regarding Text Amendment Application No. P23-03410[1] and related Environmental Finding for Environmental Assessment No. P23-03410, which will amend Sections 15-2761 and 15-6802 of the Citywide Development Code relating to Tobacco and Vapor Sales, Smoke Shops, and Definitions (the "Proposed Amendment"). We submit these comments on behalf of the CSSA and its members. The Proposed Amendment is currently set to be considered by the Planning Commission at a public hearing on February 19, 2025 at 6:00 p.m. (ID 25-160.)

The Proposed Amendment Would Lead to the Closure of At Least 70 Properly Licensed Smoke Shops and Impose Disparate Obligations on the Remaining Shops

As you are aware, the Proposed Amendment will require new and existing smoke shops to obtain a Conditional Use Permit ("CUP") to continue operating their businesses. Although there are approximately 119 smoke shops in the Fresno area, the Proposed Amendment limits the number of available CUPs to just 49 (7 in each City Council District). The imposed reduction will necessarily force numerous smoke shop businesses to permanently shutter their doors and lay off any employees. In addition, the CUPs carry additional duties and requirements that are not reasonably related to the use of property for which the CUP is required, including landscaping, lighting, litter and graffiti management, as well as vending machine prohibitions, and requirements for video surveillance, signage, window glazing, loitering, and training. In each of these cases, the Proposed Amendment directly targets CSSA members while ignoring businesses, including convenience stores, liquor stores and grocery stores that also similar products as well as alcohol.

The proposed retroactive application of a law targeted directly at one group of properly and fully licensed operating businesses violates the Fifth Amendment of the United States Constitution, which provides that no person shall be "deprived of life,

[1] In some contexts, the Proposed Amendment is also identified as Text Amendment Application No. P24-02419.

liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation" (U.S. Const., amend. V), and the California Constitution, which provides that "[p]rivate property may be taken or damaged for a public use and only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner." (Cal. Const., art. I, § 19.)

The Proposed Amendment Would Exact a Regulatory Taking of at Least 70 Smoke Shops Triggering Millions of Dollars in Compensation to the Smoke Shop Owners

The Proposed Amendment imposes significant restrictions on new and, more critically, existing smoke shops. These include the requirement for a CUP and Business License, limitations on the number of permits available, and the imposition of strict and often unrelated operational conditions. Critically, the Proposed Amended applies the new rules retroactively to existing businesses who currently operated lawfully under previously secured planning approval and licensure. Indeed, if passed, the Proposed Amendment would target at least 70 operating smoke shops, depriving their owners (and employees) of the investment-backed expectations in their properly permitted and licensed businesses.

Under the Fifth Amendment, a regulatory taking is an unreasonable exercise of a public entity's police power that eliminates or diminishes the value of property or interferes with a person's investment-backed expectations without just compensation. If passed, the Proposed Amendment would force at least 70 smoke shop businesses in the City to permanently close their doors. As to those that remain open, the Proposed Amendment imposes various unreasonable operational requirements, including landscaping, lighting, litter and graffiti, vending machines, video surveillance, signage, window glazing, loitering, and training requirements.

Put simply, the Proposed Amendment interferes with the investment-backed expectations of legally licensed and permitted smoke shops that currently comply with and satisfy state and local laws and regulations. Indeed, many law-abiding, licensed smoke shop owners will be forced to suspend operations indefinitely regardless of compliance with the broad requirements and restrictions in the Proposed Amendment. Certainly collectively, and in many cases, individually, these restrictions constitute a regulatory taking by depriving smoke shop business owners of their ability to continue operating their businesses. *Such a taking requires the City of Fresno to pay each and every smoke shop owner just compensation.* This compensation would likely cost Fresno taxpayers tens of millions of dollars.

Supporters of the Proposed Amendment claim it is an exercise of the City's police power intended to eliminate unlicensed smoke shops, address other alleged unlawful activity/violations by some smoke shops, and other alleged activities the supporters attribute to third persons near the smoke shops. But in so doing, the Proposed Amendment ignores other similarly situated businesses with similar potential problems. The Proposed Amendment would impose requirements, restrictions, and

harsh penalties on smoke shops, but not other business that sell similar products and attract similar customers, including alcohol, such as convenience stores, liquor stores, gas stations, grocery stores. Additionally, the Proposed Amendment ignores cannabis dispensaries, thereby (perhaps intentionally) giving those dispensaries an unfair economic advantage. And although the State (and by extension the City) does have an interest in regulating the smoke shop industry, such interest is already achieved under current State laws and regulations. The Proposed Amendment is therefore not reasonably necessary to effect that interest and serves only as an unjust taking.

The Proposed Amendment Would Deprive at least 70 Smoke Shop Owners of their Rights without Due Process and in Violation of the Businessmen's Equal Protection Rights

Not only does the Proposed Amendment violate Fifth Amendment protection, but the Proposed Amendment also implicates rights under the Fourteenth Amendment and the California Constitution. The Fourteenth Amendment of the United States Constitution prohibits States from depriving any person of life, liberty, or property without due process of law or from denying any person within its jurisdiction the equal protection of the laws. Likewise, the California Constitution prohibits the denial of equal protection. The concept of equal protection of the laws compels recognition of the proposition that persons similarly situated with respect to the legitimate purpose of the law receive like treatment.

Here, the Proposed Amendment treats similarly situated businesses and business properties differently. The Proposed Amendment deprives at least 70 shop owners of their business without any individualized process at all. It does not seek to separate "bad actors" from "good actors" through any type of process. It does not afford a hearing. It simply eliminates businesses. Moreover, it does so by limiting the number of smoke shops per City Council District, without regard to how many legitimate shops are in each District.

Under the equal protection clause of the U.S. Constitution and California Constitution, if a law, ordinance, or regulation affects two or more similarly situated groups in unequal manners, such legislation must be rationally related to the realistically conceivable, legitimate legislative purpose. But instead of regulating the sale of tobacco for all businesses located within the City of Fresno, the Proposed Amendment arbitrarily targets smoke shops, which are only a small subset of the businesses that sell tobacco products. Owners of grocery stores, convenience stores, gas stations, liquor stores, and cannabis dispensaries are free to continue selling tobacco and tobacco paraphernalia without obtaining a CUP or complying with the conditions imposed for the issuance of a CUP. Smoke shops are singled out and precluded from continuing their business without first obtaining a CUP. Notably, there are not enough permits for all currently licensed and permitted smoke shops to secure approvals, resulting in forced closure of at least 70 smoke shops currently existing in the City of Fresno. Since the City of Fresno provides no rational basis for treating smoke shops different from grocery stores, convenience stores, gas stations, liquor stores, cannabis

dispensaries, and others who sell tobacco products, the Proposed Amendment violates the due process and equal protection clauses of the United States and California Constitutions.

The Proposed Amendment Improperly Weaponizes CEQA Against Independent Businessmen Rather than Use it Properly as a Development Tool

The primary purpose of the California Environmental Quality Act ("CEQA") is to inform decision makers and the public about the *potential*, significant effect of *proposed* projects, attempt to mitigate those impacts, reduce impacts and disclose the basis of approvals of projects. As the highlighted language makes clear, each of these goals is *prospective*. CEQA is intended to judge the future impacts of a project prior to the decision maker approving the project. The Proposed Amendment departs from these goals entirely. In so doing, it turns CEQA into a blunt instrument retroactively aimed at uses already approved under the General Plan and operating consistently with the plan. But CEQA is not a weapon against disapproved activities. It is properly used as tool to control potential development and mitigate environmental impacts.

Moreover, the proposed use of a CUP is improper. A CUP regulates land, not individuals. Conditions on approval must reasonably relate to the use of property for which the conditional use permit is requested. The Proposed Amendment is aimed at individual smoke shop owners – its goal it to put them out of business – rather than the land on which they run their businesses.

Finally, smoke shop owners have a vested right to continue using their property in conformance with existing rules and regulations. "The law recognizes a vested right to continue a use which existed at the time zoning regulations changed and the use thereafter became a nonconforming use." If the Proposed Amendment is adopted, business owners' existing, conforming uses will suddenly become "nonconforming" uses. Rather than using the CUP-process to allow for business owners to continue their operations as previously conforming uses, the CUP requirements instead are being weaponized to declare past conforming uses as nonconforming uses for an improper exercise of police power by the City.

We appreciate the opportunity to submit these comments and appreciate your consideration.

Very truly yours,

Todd Wynkoop
Ella Moberg
Garrett J. Wade
McCormick Barstow LLP

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